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## **WISCONSIN LEGISLATIVE COUNCIL REPORT TO THE LEGISLATURE**

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### **Legislation and Petition to Wisconsin Supreme Court on Guardians Ad Litem in Actions Affecting the Family**

- Senate Bill 126, Relating to Guardians Ad Litem, Parent Education, and Parenting Plans in Actions Affecting the Family
- Petition to the Wisconsin Supreme Court to Amend Rules Relating to Eligibility for Appointment as a Guardian Ad Litem for a Minor

May 7, 2001

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**LEGISLATION AND PETITION TO THE WISCONSIN SUPREME COURT ON  
GUARDIANS AD LITEM IN ACTIONS AFFECTING THE FAMILY**

Prepared by:  
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May 7, 2001

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**CONTENTS**

<b><i>PART I - KEY PROVISIONS OF RECOMMENDATIONS .....</i></b>	<b><i>3</i></b>
<b>A. Senate Bill 126, Relating to Guardians Ad Litem, Parent Education,         and Parenting Plans in Actions Affecting the Family.....</b>	<b>3</b>
<b>B. Petition to the Wisconsin Supreme Court to Amend Rules Relating to         Eligibility for Appointment as a GAL for a Minor .....</b>	<b>4</b>
<b><i>PART II - COMMITTEE ACTIVITY .....</i></b>	<b><i>5</i></b>
<b>A. Assignment.....</b>	<b>5</b>
<b>B. Summary of Meetings .....</b>	<b>5</b>
<b><i>PART III - RECOMMENDATIONS .....</i></b>	<b><i>11</i></b>
<b>A. Senate Bill 126.....</b>	<b>11</b>
<b>B. Petition to the Wisconsin Supreme Court.....</b>	<b>15</b>
<b>C. Other Recommendations .....</b>	<b>17</b>
<b>APPENDIX 1 - COMMITTEE AND JOINT LEGISLATIVE COUNCIL VOTES.....</b>	<b>27</b>
<b>APPENDIX 2 - LIST OF JOINT LEGISLATIVE COUNCIL MEMBERS.....</b>	<b>29</b>
<b>APPENDIX 3 - LIST OF COMMITTEE MEMBERS.....</b>	<b>31</b>
<b>APPENDIX 4 - COMMITTEE MATERIALS LIST .....</b>	<b>33</b>
<b>APPENDIX 5 - PETITION TO THE WISCONSIN SUPREME COURT.....</b>	<b>35</b>



## **PART I**

### **KEY PROVISIONS OF RECOMMENDATIONS**

This part of the report summarizes the key provisions of the two proposals recommended by the Special Committee on Guardians Ad Litem in Actions Affecting the Family and approved by the Joint Legislative Council. The following bill was approved for introduction in the 2001-02 Session of the Legislature:

#### **A. SENATE BILL 126, RELATING TO GUARDIANS AD LITEM, PARENT EDUCATION, AND PARENTING PLANS IN ACTIONS AFFECTING THE FAMILY**

##### **Key Provisions**

1. Clarifies the current statutory provision governing guardian ad litem (GAL) compensation to provide that when parties are ordered to pay GAL compensation, they may be ordered to pay the GAL directly, pay into an escrow account from which the GAL will be paid, or reimburse the county if it has paid the GAL's compensation. Also, allows the court to order the county to pay a GAL's compensation for an indigent party if either party is indigent.

2. Permits a court to order income withholding to collect GAL fees or fees for mediation and custody and physical placement studies.

3. Requires the clerk of court to provide parties with instructions for completing and filing a parenting plan when the parties file a petition or receive a summons for an action affecting the family. Also, provides that a mediator must review the nonfinancial provisions of the parenting plan at the initial session of mediation.

4. Requires parties to file a parenting plan with the court within 60 days after the court waives the requirement that the parties attend mediation or within 60 days after the mediator notifies the court that the parties have not reached an agreement, unless the court orders otherwise.

5. Requires parties to an action affecting the family in which a minor child is involved to attend a parent education program that includes at least four hours of instruction or training on the effects of divorce on a child; working together in the best interest of the child; parenting or coparenting skills; the consequences of stipulating to a custody and placement arrangement and of resolution of disputes by the court; available mediation; current law relating to custody and physical placement; current law relating to the duties and responsibilities of a GAL; and the potential costs associated with an action affecting the family.

6. Provides that a court or family court commissioner (FCC) may elect not to order attendance at a parent education program or may order the parties to attend separate sessions of the program if the court or FCC determines that attending the program or attending the program with the other party would cause undue hardship or endanger the health or safety of one of the parties.

7. Provides that the court or FCC may require attendance as a condition to the granting of a final judgment or order in the action, if attendance at the program is ordered. In addition, the court or FCC may refuse to hear a custody or physical placement motion of a party who refuses to attend the program.

**B. PETITION TO THE WISCONSIN SUPREME COURT TO AMEND RULES RELATING TO ELIGIBILITY FOR APPOINTMENT AS A GAL FOR A MINOR**

**Key Provisions**

1. Requires attorneys who accept appointments as a GAL in actions affecting the family to have received six hours of approved GAL education during the combined current biennial continuing legal education reporting period and the immediately preceding reporting period. Three of the required six hours would be in family court GAL education. In addition, a court could appoint an attorney who has not met this requirement if the court finds that the action or proceeding presents exceptional or unusual circumstances for which the attorney is otherwise qualified by experience or expertise.

2. Specifies that family court GAL education must be on the subjects of: actions affecting the family; child development and the effects of conflict and divorce on children; mental health issues in divorcing families; the dynamics and impact of family violence; and sensitivity to various religious backgrounds, racial and ethnic heritages and issues of cultural and socioeconomic diversity.

## **PART II**

### **COMMITTEE ACTIVITY**

#### **A. ASSIGNMENT**

The Joint Legislative Council established the Special Committee by a May 18, 2000 mail ballot and appointed the cochairs by a June 13, 2000 mail ballot. The Special Committee was directed to study the GAL system as it applies to actions affecting the family, including an examination of the appointment, role, supervision, training and compensation of GALs. The review of the appointment of GALs was to include the necessity of appointment in contested custody or placement cases and whether professionals with specialized expertise in the emotional and developmental phases and needs of children should be appointed to act as GALs. The committee was directed to prepare a report of any recommended legislation and to petition the Wisconsin Supreme Court to consider rules for the reform of the GAL system in actions affecting the family based on the committee's recommendations that are more appropriate for Supreme Court rules.

The membership of the Special Committee, appointed by August 14 and October 12, 2000 mail ballots, consisted of four Senators, three Representatives and 12 Public Members.

A membership list of the Joint Legislative Council is included as **Appendix 2**. A list of the committee membership is included as **Appendix 3**.

#### **B. SUMMARY OF MEETINGS**

The Special Committee held five meetings at the State Capitol in Madison on the following dates:

September 13, 2000  
October 24, 2000  
November 14, 2000

December 12, 2000  
January 12, 2001

At the September 13, 2000 meeting, the Special Committee received testimony from J. Denis Moran, Director of State Courts, and Attorney Gretchen Viney, Baraboo. Mr. Moran, accompanied by Pam Radloff, fiscal officer for the Director of State Courts, discussed his office's role in training GALs, the "Through the Eyes of a Child" training program and the Board of Bar Examiners' approval of continuing legal education courses for GALs. Mr. Moran also explained his office's administration of grants to counties for GAL expenditures and answered questions regarding how GALs are reimbursed when parents do not pay. Attorney Viney described her work as a contract GAL in Sauk County. She explained circumstances in which GALs are appointed and noted that each county has its own system for appointing and compensating GALs. Ms. Viney outlined the statutory requirements for GALs in family law cases and the steps she goes through as a GAL in a typical proceeding.

The Special Committee also briefly reviewed a staff brief on GALs in family law cases.

At the October 24, 2000 meeting, the Special Committee received testimony from Judge Gary Carlson and Jean Nuernberger, Coordinator, Family and Juvenile Services, Taylor County Circuit Court, Medford; Attorney Charles Senn, Thorp; Judge Daniel Noonan, Milwaukee County Circuit Court, Milwaukee; Attorney Margaret Wrenn Hickey, Milwaukee; Kathleen Jeffords, Director, Dane County Family Court Counseling Services, Madison; Judge John Albert, Dane County Circuit Court, Madison; and Diane Wolff, Director, Waukesha County Family Court Counseling Services, Waukesha. Judge Carlson explained how he works as a team with Ms. Nuernberger and Attorney Senn in contested family law cases. He explained what he requires of the parties and attorneys in a custody case and distributed materials concerning the median cost of a GAL for a litigated case in Taylor County. Ms. Nuernberger described her work as coordinator of a parenting program on divorce and as a mediator in contested cases. She also explained her role in developing parenting plans, recommending whether GALs are needed in certain cases and conducting home studies. Attorney Senn discussed the need for ongoing training of GALs who are handling family court cases. He also addressed the need for parties to be educated regarding the role of the GAL and the costs of litigation. He also discussed the evaluation of GALs. Judge Noonan discussed the large volume of divorce cases in Milwaukee County, about 50% of which are *pro se* cases. He explained the system for appointing GALs in Milwaukee County and the arrangement the county has with the Legal Aid Society of Milwaukee County for appointing GALs in low-income cases. Attorney Hickey discussed her role as a family law attorney in Milwaukee County and the importance of GALs being attorneys, since the law requires them to be advocates for the best interests of children. Ms. Jeffords explained the parent education program and mediation and custody and placement study services provided by the Dane County Family Court Counseling Services program. She emphasized the importance of GALs being attorneys and recommended additional funding for family court counseling services. Judge Albert discussed his role as a circuit judge handling divorce cases. He noted his opposition to having trained volunteers, rather than attorneys, acting as GALs. He stated the importance of GAL training including training in child development and the need for more accountability for GALs. Ms. Wolff discussed the family court counseling services provided in Waukesha County. She noted the importance of GALs bringing a legal perspective, as opposed to a social work perspective, and their trial advocacy skills, to a case.

The Special Committee also discussed Memo No. 1, *Issues Raised for Consideration by the Special Committee on Guardians Ad Litem in Actions Affecting the Family* (October 13, 2000).

At the November 14, 2000 meeting, the Special Committee received testimony from Kenneth Waldron, psychologist, Waldron, Kriss and Associates, Middleton; Jan Raz, President, Wisconsin Fathers for Children and Families, Hales Corners; Carol Medaris, staff attorney, Wisconsin Council on Children and Families, Madison; and Attorney Marjorie Schuett, Lathrop and Clark, LLP and Chair, Family Law Section, State Bar of Wisconsin, Madison. Mr. Waldron discussed his work with divorcing families as a psychologist. He stated that GALs would benefit from increased knowledge in several areas, including: child development; understanding the effects of conflict on children, recognizing parents' character



disorders; working with mental health professionals, learning how children express preferences; and developing child-focused plans for divorcing families. Mr. Raz cited a number of concerns, including that parenting plans are not used early enough in the court process and that the best interests of the child standard conflicts with the requirement to maximize placement with each parent. He suggested that GALs not be appointed unless there are special concerns for the welfare of the child and that parents be required to file a parenting plan earlier in the process. He also suggested requiring courts to determine allocation of periods of physical placement by considering the parenting plans and requiring GALs and mediators to use the same legal standards for resolving custody and placement disputes as do court commissioners and judges. Ms. Medaris stated that GALs are very important in contested custody proceedings and that they must be attorneys to balance the representation of the parents' interests with those of their children. She recommended that GALs receive additional training focusing on child development, family systems and trial advocacy, as well as domestic abuse training to heighten GALs' awareness and sensitivity to the effect of domestic abuse on family dynamics. She also recommended that financial and other costs of custody disputes be explained to parents early in the case and that the "best interests of the poor child" should be taken into consideration. Ms. Schuett discussed the Family Law Section's efforts on behalf of children and the Section's perspective on the importance of maintaining high standards for GALs. She described various areas in which the Section has supported the Legislature's and the Supreme Court's initiatives to improve the quality of GAL representation and to try to ensure fair results in family law disputes. She noted that the Family Law Section supports continuing education and training for GALs as well as adequate compensation.

The Special Committee discussed the recommendations that had been made to the committee to date, summarized in Memo No. 2, *Issues Raised for Consideration by the Special Committee on Guardians Ad Litem in Actions Affecting the Family* (November 7, 2000). The committee eliminated some recommendations from further consideration and agreed to discuss others at a subsequent meeting.

At the December 12, 2000 meeting, the Special Committee received testimony from Jennifer Ortiz, Supervising Attorney, Guardian ad Litem Division, and James Brennan, Chief Staff Attorney, Legal Aid Society of Milwaukee, Inc., Milwaukee; Amy O'Neil, Task Force on Family Violence, Milwaukee; and Laurie Jorgensen, Cochair, Justice Committee, Governor's Council on Domestic Abuse, Wausau. Ms. Ortiz discussed the GAL Division's work in representing low-income individuals in family court cases, including serving as GALs for minor teen parents from Milwaukee County. She explained the in-house training provided for GALs by Legal Aid in order to try to address the many different cultural needs of individuals represented. She recommended continuing the practice of using attorneys as GALs and providing training to GALs relating to cultural sensitivity. Mr. Brennan discussed Legal Aid's employment of social workers and training of attorneys to investigate cases and conduct home studies. Ms. O'Neil explained her role as a victim advocate for children in court cases and assisting families in obtaining restraining orders and advocating for children who have been abused or have witnessed abuse. She discussed the importance of GALs in custody cases and the particularly vital role of GALs when domestic abuse or child abuse is present. She emphasized the need for GALs to recognize the dynamics of a child's home life in domestic abuse situations and the importance of training GALs to recognize and understand

warning signs of domestic abuse. Ms. Jorgensen explained the work of the Justice Committee in advising the Governor's Council on Domestic Abuse regarding issues in the courts across the state as they relate to victims of domestic abuse. She emphasized the need for GALs to have training in and understanding of the dynamics of domestic violence and the profound impact it has on children, as well as the need for GALs to take threats of violence seriously. She also addressed the need for a mechanism for accountability when GALs do not fulfill their responsibilities adequately.

The Special Committee discussed Memo No. 3, *Issues Raised for Consideration by the Special Committee on Guardians Ad Litem in Actions Affecting the Family* (December 5, 2000). The committee discussed issues relating to training for GALs and agreed to include a number of suggested training topics in a letter to the State Bar. The committee also discussed Memo No. 4, *Three Draft Letters* (December 5, 2000), which contained three draft letters prepared at the committee's request. The first letter, addressed to the Cochairs of the Joint Legislative Audit Committee, requested that the Legislative Audit Bureau be directed to audit various items relating to the compensation of GALs and the provision of family court counseling services. The second letter, to Chief Justice Shirley Abrahamson, in her capacity as Chair of the Supreme Court's Judicial Education Committee, requested that that Judicial Education Committee consider including several items relating to GALs in its judicial education program. The third letter, to George Brown, Executive Director, State Bar of Wisconsin, requested that the Bar provide continuing legal education for GALs that focuses on issues that arise in family law disputes; develop a videotape that addresses the consequences to parties of contesting legal custody or physical placement; and coordinate mentoring for new GALs. The committee suggested a number of changes in the draft letters to be reviewed at the next meeting of the committee.

The committee also discussed a bill draft, WLCS: 0019/1, relating to compensation of guardians ad litem, parent education and parenting plans in actions affecting the family. The draft: (1) clarified current law to provide that parties ordered to pay GAL compensation may be ordered to pay the GAL directly, pay into an escrow fund from which the GAL will be paid, or reimburse the county if it is paid the GAL's compensation; (2) added a requirement that the four-hour educational program for parties in family law cases on the effects of marriage dissolution must include the viewing of a videotape that addresses the financial and other consequences of contesting legal custody or physical placement and the effects of conflict on children; and (3) required parties to file a parenting plan with the court prior to attending the first session of mediation, with certain exceptions. The committee asked for a redraft of this proposal to include language proposed in a memo from Judge Kirk for items to be covered in parent education. The committee also asked staff to prepare a draft requiring a GAL to describe to the court what he or she considered in making the recommendation regarding the best interest of a child.

At the January 12, 2001 meeting, the Special Committee discussed the three draft letters that were revised following the previous meeting to incorporate members' suggestions. The committee agreed to make additional modifications in the three letters and gave final approval to sending the letters, as modified. The committee then discussed WLCS: 0019/2, a redraft of a previous draft. The committee made a number of modifications to the draft and gave final approval to recommending the draft, as amended and renumbered WLC: 0019/3, to

the Joint Legislative Council for introduction. The committee considered WLCS: 0057/1, agreed to incorporate a portion of it in WLC: 0019/3 and rejected the remainder of the draft. The committee also considered a draft petition to the Wisconsin Supreme Court asking for modifications to the Supreme Court's rules regarding GAL training. The committee made a modification and approved the petition, as amended, for submission to the Joint Legislative Council for approval and subsequently, to the Wisconsin Supreme Court. The committee reviewed and decided not to send a letter to Representative Carol Owens, Chair of the Assembly Family Law Committee, and Senator Gary George, Chair of the Senate Judiciary Committee, regarding child support.



## **PART III**

### **RECOMMENDATIONS**

This part of the report provides background information on, and a description of, the two proposals recommended by the Special Committee on Guardians Ad Litem in Actions Affecting the Family and approved by the Joint Legislative Council.

#### **A. SENATE BILL 126**

##### **1. Reimbursement of GAL Costs**

###### **Background**

Current law relating to GAL compensation provides that the court must order either or both parties in an action affecting the family to pay all or any part of the compensation of the GAL. The Special Committee determined that many judges and FCCs are interpreting this provision to require the GAL to collect his or her own fees although many counties prefer to collect the fees for GALs and reimburse them, to eliminate the pressure that a party who is paying the GAL directly may exert. The Special Committee concluded that judges and FCCs should be permitted to require parties to place funds into an escrow account to reimburse the GAL or to order the county to pay the GAL directly and then have the parties reimburse the county.

##### **2. Description of the Bill**

The bill specifies that a court order to pay the compensation of a GAL may direct either or both parties to pay the GAL directly, to pay into an escrow fund from which the GAL is reimbursed, or to reimburse the county of venue for payments made by the county to the GAL.

##### **3. Compensation of GALs for Indigent Parties**

###### **Background**

Under current law relating to GAL compensation, if both parties to an action affecting the family are indigent, the court may direct that the county of venue pay the compensation and fees. Prior to the enactment of 1995 Wisconsin Act 27, the 1995-97 Biennial Budget Act, the court was permitted to direct the county of venue to pay compensation and fees of a GAL if either or both parties were unable to pay. In addition, the court was permitted to direct that any or all parties reimburse the county in whole or in part, for the payment. A recent Court of Appeals decision held that the current statute does not permit a court to order the county to pay a GAL's compensation when only one party to an action affecting the family proceeding is found to be indigent. The court stated that the change in the wording of the statute under Act 27 is a clear signal that the Legislature intended to decrease the number of cases in which counties are ordered to pay for GALs. The court concluded that, as currently drafted, the statute provides that when one party is indigent and the other is not, the court's only option is

to order the nonindigent party to pay the GAL's fees. [*Olmsted v. Circuit Court*, 2000 Wi. App. 261, 2000 Wisc. App. LEXIS 1111 (2000).]

The Special Committee concluded that a court should be permitted to order the county to pay GAL compensation if *either* party is indigent.

### **The Bill**

Under the bill, if either party is indigent, the court may direct that the county of venue pay the GAL compensation and fees for that party.

## **4. Income Withholding to Pay Fees**

### **Background**

Under current law, the court is not permitted to order an income withholding, or "wage assignment," in order to reimburse the county or a GAL for GAL compensation or to collect fees for mediation services or custody and placement studies.

The Special Committee concluded that allowing courts to order income withholding to collect GAL or family court counseling service fees would help counties collect costs they are owed.

### **The Bill**

Under the bill, the court may order an income withholding for the amount of GAL reimbursement in favor of the county or the GAL and against a party or parties responsible for the reimbursement. In addition, a court or FCC may order income withholding for one or both parties in order to collect fees for mediation or a custody and placement study.

## **5. Parenting Plans**

### **Background**

Under current law, in an action affecting the family in which legal custody or physical placement of a child is contested, a party seeking sole or joint legal custody or periods of physical placement must file a parenting plan with the court before any pretrial conference. Unless cause is shown, a party required to file a parenting plan who does not timely file the plan waives the right to object to the other party's plan.

A parenting plan must provide information about questions such as what legal custody or physical placement the parent is seeking, where the parent lives, where the parent works and what hours he or she works, who will provide necessary child care, where the child will go to school, how the child's medical care will be provided and what the child's religious commitment will be, if any. In addition, the parenting plan must discuss how the child's time is proposed to be divided between the two parents and how the parent proposes to resolve disagreements related to matters over which the court orders joint decision-making. Finally,

the parenting plan should discuss what child support, family support, maintenance or other income transfer there will be.

Under current law, the parenting plan must be filed with the court before any pretrial conference. Testimony to the Special Committee indicated that there is no definition of pretrial conference and the term is interpreted differently across the state. Also, in some counties, the pretrial conference is considered to be a conference that is held in preparation for a scheduled trial.

The Special Committee discussed that the parenting plan appears to be a good tool in helping parties come to a mutually satisfactory agreement outside of court about custody and placement arrangements. The committee concluded, therefore, that parties should receive information on the parenting plan soon after commencing an action affecting the family.

### **The Bill**

Under the bill, the clerk of court must provide, without charge, to each person filing a petition in an action affecting the family instructions for completing and filing a parenting plan. In addition, a summons in any action affecting the family must be accompanied by instructions, provided without charge by the clerk of court, for completing and filing a parenting plan.

The bill also provides that at the parties' initial session of mediation in an action affecting the family, the mediator must review with the parties the nonfinancial provisions of the parenting plan.

Finally, under the bill, the parenting plan must be filed with the court within 60 days after the court waives the requirement for the parties to attend mediation or within 60 days after the mediator for the parties notifies the court that the parties have not reached an agreement, unless the court orders otherwise.

## **6. Parent Education**

### **Background**

Under current law, at any time during the pendency of an action affecting the family in which a minor child is involved and in which the court or FCC determines that it is appropriate and in the best interests of the child, the court or FCC, on its own motion, may order the parties to attend a program specified by the court or FCC concerning the effects on a child of a dissolution of the marriage. In addition, at any time during the pendency of an action to determine paternity of a child, the court or FCC may order either or both of the parties to attend a program specified by the court or FCC that provides training in parenting or coparenting skills or both.

Current law provides that these programs must be educational rather than therapeutic in nature and may not exceed a total of four hours in length. The parties are responsible for the costs, if any, of attendance at the program.

Under current law, the court or FCC may require the parties to attend an educational program as a condition to the granting of a final judgment or order in the action affecting the family that is pending. A party who fails to attend an educational program as ordered or who fails to pay for the educational program may be proceeded against for contempt of court.

Also under current law, at any time during the pendency of a divorce or paternity action, the court or FCC may order the parties to attend a class as approved by the court or FCC and that addresses such issues as child development, family dynamics, how parental separation affects child development and what parents can do to make raising a child in a separated situation less stressful for the child. The court or FCC may not require the parties to attend such a class as a condition to the granting of the final judgment or order in the divorce or paternity action. However, the court or FCC may refuse to hear a custody or physical placement motion of a party who refuses to attend such a class. The parties are responsible for any costs of attending such a class. However, if the court or FCC finds that a party is indigent, any costs that would be the responsibility of that party are paid by the county.

During its deliberations, the Special Committee discussed the importance of educating parties on the effects and consequences of litigation in family court, the financial costs of protracted litigation and the roles and responsibilities of the parties, GALs and attorneys in the cases. The Special Committee concluded that certain changes should be made to current law relating to education programs to better prepare parties for litigation and coparenting after a divorce or other action affecting the family.

### **The Bill**

Under the bill, during the pendency of an action affecting the family in which a minor child is involved, the court or FCC ***must*** order the parties to attend a program specified by the court or FCC that provides instruction on or training in any of the following that the court or FCC determines is appropriate in the particular case:

- a. The effects of divorce on a child.
- b. Working together in the best interest of the child.
- c. Parenting or coparenting skills, or both.
- d. The consequences of stipulating to a custody and placement arrangement and of resolution of disputes by the court.
- e. Available mediation.
- f. Current law relating to custody and placement.
- g. The provisions of current law relating to the role and responsibilities of the GAL and the duties and responsibilities of a GAL in representing the best interest of a child.
- h. The potential costs of an action affecting the family, including the cost of representation by an attorney; mediation fees; legal custody and physical placement study



fees; GAL fees and expenses and the fees and expenses of any expert witness ordered to assist the GAL; the costs of mental or physical examinations of a party, if applicable, including the costs for preparing a written report or court testimony; and any other costs, fees or expenses that may be incurred during litigation.

Under the bill, in the discretion of the court or FCC, the parties may not be required to attend an educational program or may be required to attend separate sessions of the program if the court or FCC finds that attending such a program or attending such a program with the other party would cause undue hardship or endanger the health or safety of one of the parties. When making a determination of whether attending a program or attending the program with the other party would endanger the health or safety of one of the parties, the court or FCC must consider evidence that a party engaged in abuse of the child, evidence of interspousal battery or domestic abuse, evidence that either party has a significant problem with alcohol or drug abuse, and any other evidence indicating that a party's health or safety will be in danger by attending a program or by attending the program with the other party.

Under the bill, the educational program must include *at least* four hours of instruction or training.

The bill provides that the court or FCC may require the parties to an action affecting the family in which a minor child is involved to attend an educational program as a condition to granting a final judgment or order in an action affecting a family. If the parties were not ordered to attend a program because the court or FCC found that attending the program would cause undue hardship or endanger the health or safety of one of the parties, the court or FCC may not condition the granting of the final judgment or order in the action affecting the family on attending the program.

The bill also provides that the court or FCC may refuse to hear a custody or physical placement motion of a party who refuses to attend an educational program.

## **B. PETITION TO THE WISCONSIN SUPREME COURT**

### **1. Background**

Under current law, a GAL must be an attorney admitted to practice in this state. Current Supreme Court rules govern GAL qualifications. Specifically, under the current rules, a lawyer may not accept an appointment by a court as a GAL unless one of the following conditions has been met: (a) the lawyer has attended 30 hours of approved GAL education at any time since January 1, 1995; (b) the lawyer has attended six hours of approved GAL education during the combined current reporting period at any time he or she accepts an appointment and the immediately preceding reporting period; and (c) the appointing court has made a finding in writing or on the record that the action or proceeding presents exceptional or unusual circumstances for which the lawyer is otherwise qualified by experience or expertise to represent the best interests of the minor.

These rules apply to attorneys who accept GAL appointments in proceedings under ch. 48 (the Children's Code), ch. 767 (actions affecting the family) or ch. 938 (the Juvenile Justice Code), Stats. GAL education is approved by the Board of Bar Examiners. The Board

approves continuing legal education that the Board determines relates to the role and responsibility of a GAL for a minor in various court proceedings and that is designed to increase professional competence to act as a GAL for a minor.

Various individuals provided testimony to the Special Committee that GALs practicing in family court do not receive adequate training relating to issues that children and their parents are experiencing during a divorce or other actions affecting the family. The Special Committee concluded that, due to the level of conflict in family law cases, a GAL practicing in family court who has knowledge about child development and family dynamics can better formulate a recommendation to serve a child's best interests. In addition, the Special Committee discussed the importance of such GALs receiving ongoing relevant education in order to effectively represent the best interests of children in family law disputes.

## **2. The Petition**

Under the petition, the Joint Legislative Council, on the unanimous recommendation of the Special Committee on Guardians Ad Litem in Actions Affecting the Family, petitions the Wisconsin Supreme Court to amend current rules relating to eligibility for appointment as a GAL for a minor. The requested modifications only relate to GALs who are appointed in actions affecting the family under ch. 767, Stats. Under the proposed rule change, commencing on July 1, 2002, a lawyer may not accept an appointment by a court as a GAL for a minor in an action or proceeding under ch. 767, Stats., unless one of the following conditions has been met:

a. The lawyer has attended six hours of GAL education during the combined current reporting period at the time he or she accepts an appointment and the immediately preceding reporting period. At least three of the six hours must be in family court GAL education.

b. The appointing court has made a finding in writing or on the record that the action or proceeding presents exceptional or unusual circumstances for which the lawyer is otherwise qualified by experience or expertise to represent the best interests of the minor.

The proposed rules would also require the Board of Bar Examiners to approve courses of instruction or continuing legal education activities as family court GAL education that are on the subject of proceedings under ch. 767, Stats.; child development and the effects of conflict and divorce on children; mental health issues in divorcing families; the dynamics and impact of family violence, and sensitivity to various religious backgrounds, racial and ethnic heritages and issues of cultural and socioeconomic diversity.

The petition was filed with the Clerk of the Wisconsin Supreme Court on April 5, 2001. A copy of the petition is included as **Appendix 5**.

### **C. OTHER RECOMMENDATIONS**

As noted, the Special Committee voted that the Cochair of the Special Committee send letters to the Cochair of the Joint Legislative Audit Committee, Chief Justice Shirley Abrahamson, and the State Bar of Wisconsin, as follows:

**Item 1** - Letter to Representative Joseph Leibham and Senator Gary George, Cochair, Joint Legislative Audit Committee, requesting that the Legislative Audit Committee be directed to audit various items relating to the compensation of GALs and the provision of family court counseling services.

Representative Joseph Leibham  
Cochair, Joint Legislative Audit Committee  
Room 123 West, State Capitol  
Madison, WI 53701

Senator Gary George  
Cochair, Joint Legislative Audit Committee  
Room 118 South, State Capitol  
Madison, WI 53701

Dear Representative Leibham and Senator George:

We are writing in our capacity as Cochair of the Joint Legislative Council's Special Committee on Guardians Ad Litem in Actions Affecting the Family, which recently concluded its work. The Special Committee was directed to study issues and develop recommendations relating to the appointment, role, supervision, training and compensation of guardians ad litem (GALs) in family law cases. The committee membership list is attached.

Invited speakers testified concerning the adequacy of compensation for GALs, methods of payment for their services and the extent to which counties recoup their costs from parties who are able to pay for GAL services. Some speakers also expressed concerns about variations among the counties in the provision of family court counseling services and noted that inadequate family court counseling services result in greater reliance on GAL appointments than might otherwise be necessary.

At its final meeting on January 12, 2001, the Special Committee voted unanimously to request an audit by the Legislative Audit Bureau on the following subjects:

1. State compensation to counties for the cost of GAL services to persons who are unable to pay, as provided in s. 758.19 (6), Stats.;
2. Recoupment by counties of payments for GAL services from persons who are responsible for those costs and costs that are not reimbursed due to:
  - a. Insufficient collection efforts; and
  - b. Waiver of reimbursement due to the parties' indigency.
3. Implementation and funding of family court counseling services under s. 767.11, Stats.

### **COMPENSATION OF GAL COSTS WHERE PARTIES UNABLE TO PAY**

Under current law, general purpose revenue is appropriated for grants to counties for costs of GAL compensation incurred by counties in actions affecting the family (under ch. 767, Stats.) that the counties have final legal responsibility to pay or that they are unable to recover from another person. The GAL grant funds are distributed to counties based on the formula in s. 758.19 (6) (c), Stats.

An audit could examine whether the current statutory formula results in compensation to counties that reflects actual costs incurred by the counties in paying for GAL services where the parties are unable to pay.

### **RECOUPMENT OF COUNTY GAL COSTS WHERE PARTIES ABLE TO PAY**

Testimony before the Special Committee indicated that there is variation among the counties in how payments to GALs are handled when the parties are able to pay. Some counties require that GALs collect their fees directly from the parties, without any county involvement. Other counties collect the GAL fees from the parties and then pay the GAL for services provided. Some counties pay the GAL directly and collect money from the parties to recoup their costs. However, it appears that such counties only reimburse GALs at a rate of between \$40 and \$70 per hour and require GALs who charge a higher fee to collect the fees themselves.

There is some concern that requiring a GAL, who is appointed by the court, to collect his or her own fees from the parties places the GAL in an awkward position, particularly if one or both parties is disgruntled with the GAL's decisions regarding the child or children whose interests the GAL represents. On the other hand, there is concern about the administrative burden on counties of collecting from the parties and paying the GALs, as well as the possibility that counties are not recouping all of their costs from the parties.

An audit could review:

- a. How counties currently handle GAL compensation where the parties are able to pay.
- b. Whether counties fully recoup payments they make to GALs from parties who are able to pay.
- c. Variations in the rate and method of compensation of GALs among the counties.

### **FAMILY COURT COUNSELING SERVICES**

Mediation and custody and placement studies must be made available to families pursuant to s. 767.11, Stats. The services are partially funded by a \$20 filing fee to commence an action affecting the family and \$25 of the filing fee to show cause for the revision of a legal custody or physical placement order or objection to a parent's move.

Testimony before the Special Committee indicated that counties vary in the provision of family court counseling services and that a number of counties have not established an in-house family court counseling office, but instead contract with others to provide mediation and conduct custody and placement studies. Inadequate funding for family court counseling services was cited as the primary reason for opting not to offer services directly to parties. The Director of Dane County Family Court Counseling estimated that the current fee structure for family court counseling provides only about 25% of the cost to provide services in Dane County and noted that the \$300 statutory fee for a custody study has not been increased since the inception of family court counseling services in 1989.

One of the primary concerns the committee discussed is the extent to which the mediation component of family court counseling services is provided in a timely fashion to all parties, regardless of ability to pay. The committee was interested in whether the provision of timely mediation services reduces the need for custody studies and GAL services and, conversely, whether failure to provide early and efficient mediation leads to increased family court counseling and GAL costs. The committee was particularly concerned that, because of inadequate funding for mediation and custody and placement studies, some parties may wait a long time for services, making it more difficult to resolve disputes without protracted litigation.

An audit could review:

- a. Variations in the level and types of family court counseling services provided by the counties.
- b. The extent to which counties are using parenting plans [see s. 767.24 (1m)], what form they take and whether use of the plans has resulted in a savings in family court counseling and GAL costs, as compared to the period before use of parenting plans was mandated.
- c. A comparison of amounts expended by counties to provide mediation and custody and placement studies to the amounts received by counties from the filing fees described above and state reimbursement, to determine the extent of any funding shortfall experienced by counties in providing these services.
- d. The extent, if any, to which the provision of early mediation services has an impact on the number of custody and placement studies ordered and GALs appointed and associated cost savings, if any.
- e. The extent, if any, to which timely custody and placement studies impact on the number of GAL's appointed and the associated cost savings of fewer GAL appointments or reduced GAL costs, if any.
- f. The extent, if any, to which a county's cost savings associated with fewer GAL appointments affect the total funds expended by that county on family court counseling services.

- g. The efficacy of replacing the current flat fees of \$200 for mediation (after an initial free session) and \$300 for a custody study and instead permitting each county to establish a sliding fee scale based on the parties' ability to pay.
- h. The association between early access to mediation and the resolution of disputes in a manner that is cost-effective, timely and likely to avoid post-judgment action.
- i. Whether the practice in some counties of requiring payment before mediation occurs precludes low-income parties from obtaining timely mediation.

Thank you for considering the Special Committee's audit request. We would be happy to answer any questions you may have about this request and to testify in favor of the proposed audit before the Joint Legislative Audit Committee.

Sincerely,

---

Representative Mark Gundrum, Cochair  
Special Committee on Guardians Ad Litem  
in Actions Affecting the Family

---

Senator Kim Plache, Cochair  
Special Committee on Guardians Ad Litem  
in Actions Affecting the Family

Attachment

cc: Janice Mueller, State Auditor

**Item 2** - Letter to Chief Justice Abrahamson, Chair of the Wisconsin Supreme Court's Judicial Education Committee, requesting that the Judicial Education Committee consider including several items relating to GALs in its judicial education program.

The Honorable Shirley S. Abrahamson  
Chief Justice, Wisconsin Supreme Court  
119 Martin Luther King, Jr. Blvd., Suite 101  
Madison, WI 53701

Dear Chief Justice Abrahamson:

We are writing in our capacity as Cochairs of the Joint Legislative Council's Special Committee on Guardians Ad Litem in Actions Affecting the Family. The Special Committee met from September 2000 to January 2001, to study issues and develop recommendations relating to the appointment, role, supervision, training and compensation of guardians ad litem (GALs) in family law cases. The committee membership list is enclosed.

In testimony before the committee, several speakers expressed concern that judges do not always make clear to GALs their expectations of the GAL at the outset of a case. Speakers also noted that the parties in a family law action may not fully understand the role and responsibilities of the GAL and the interests that the GAL represents, namely the best interests of the child or children of the divorcing parties. Finally, speakers and committee members discussed the need for assurances that GALs are performing the work expected of them throughout the course of their representation of a child.

Following discussion of these issues at its final meeting on January 12, 2001, the Special Committee voted unanimously to correspond with you as Chair of the Wisconsin Supreme Court's Judicial Education Committee, to recommend that the committee include in its judicial education programs information on the importance of the judge or family court commissioner: (1) communicating clearly the court's expectations to the GAL at the earliest opportunity in every case; (2) ensuring that the parties understand that the GAL is appointed by the court to represent and advocate for the child's best interests; (3) inquiring of the GAL, during court proceedings, about actions taken and work performed in the matter; and (4) providing feedback on the GAL's performance where the court or family court commissioner deems it appropriate, recognizing the need to respect the rules regarding *ex parte* communications.

We would be happy to discuss this request with you or members or staff of the Judicial Education Committee at your convenience.

Thank you for your consideration of these recommendations.

Sincerely,

---

Representative Mark Gundrum, Cochair  
Special Committee on Guardians Ad Litem  
in Actions Affecting the Family

---

Senator Kim Plache, Cochair  
Special Committee on Guardians Ad Litem  
in Actions Affecting the Family

Enclosure

cc: Mr. David H. Hass, Director of Judicial Education, and Wisconsin Supreme Court  
Justices, Wisconsin Supreme Court



**Item 3** – Letter to George Brown, Executive Director, State Bar of Wisconsin, requesting that the Bar provide continuing legal education for GALs that focuses on issues that arise in family law disputes; develop a videotape that addresses the consequences to parties of contesting legal custody or physical placement; and coordinate mentoring for new GALs.

Mr. George Brown, Executive Director  
State Bar of Wisconsin  
P.O. Box 7158  
Madison, WI 53707-7158

Dear Mr. Brown:

We are writing in our capacity as Cochairs of the Joint Legislative Council's Special Committee on Guardians Ad Litem in Actions Affecting the Family, which recently concluded its work. The Special Committee was directed to study the guardian ad litem (GAL) system as it applies to actions affecting the family, including an examination of the appointment, role, supervision, training and compensation of GALs. The committee membership list is attached.

At its final meeting on January 12, 2001 meeting, the Special Committee voted unanimously to correspond with you to request that the State Bar consider several issues in offering services to and providing continuing legal education for attorneys who serve as GALs in family law cases. These issues relate to training, education of parties on the role of the GAL and the experience of a custody or placement dispute, and possible mentoring for new attorneys who accept GAL appointments in family court.

### **TRAINING OF GALs**

Many individuals who testified before the Special Committee offered suggestions for areas in which the training of GALs could be developed or expanded. Because the State Bar offers a great deal of the required continuing legal education specifically targeted at practice as a GAL, we ask that you consider offering training, or in some cases, more training, on the following subjects:

1. Maintaining Impartiality: Although a party may not agree with a GAL's recommendation, he or she should believe that the GAL acted independently and gathered information impartially to assess what is in a child's best interest. The Special Committee recommends that the State Bar offer training that addresses actions that a GAL may take or avoid to assure parties that the GAL is acting independently and avoiding assessing the facts of the case or taking a position based upon personal biases such as gender, socio-economics, religion or race.
2. Issues for children and families experiencing divorce: Concerns were raised to the Special Committee that current training offered to GALs does not offer adequate information on issues affecting children and families during a divorce, including mental health issues. Although committee members recognize that training in trial

advocacy skills is also very important for attorneys who act as GALs, the committee recommends that the State Bar offer further training in areas such as:

- Child development, including how children of different ages process and report information; how children of different ages experience divorce; the needs of children of varying ages to spend time with each parent; and the role of each parent based upon the stage in a child's development.
  - How children are affected by conflict and parental alienation.
  - How to work with a mental health professional in a case and how and when to recommend that parties or children be assessed by a mental health professional.
  - Understanding and appreciating the dynamics and impact of family violence and ensuring safety and maintaining confidentiality in cases in which family violence is an issue.
  - Understanding and appreciating the implications of a child's religious background and racial or ethnic heritage and issues of cultural and socio-economic diversity.
  - Conflict resolution.
3. Interviewing children: As discussed above, the Special Committee heard testimony regarding the ways children process and report information based upon their age and the effects of any conflict on them. Based on this information, the Special Committee believes it is important that all GALs who practice in family court receive training specific to interviewing children in developmentally appropriate ways.

### **EDUCATION OF PARTIES**

The Special Committee heard testimony from several individuals expressing the concern that parties in a family law dispute are not fully aware of the costs, both financial and psychological, of protracted litigation. In addition, attorneys and judges indicated that many parties do not have an accurate understanding of the role of the GAL and what the GAL may and may not do. It was the consensus of committee members that if parties were better educated in these areas, they would be more likely to resolve disputes early in the process and reduce costs to the parties and taxpayers. In addition, there would be less confusion about and resentment of the legal process and the GAL. Also, parties would be better able to distinguish between proper representation by a GAL, even if they disagree with the GAL's recommendation, and instances in which a GAL is acting improperly.

In response to those concerns, we have corresponded with Chief Justice Shirley Abrahamson in her capacity as chair of the Supreme Court's Judicial Education Committee to request that judicial education programs include information on the importance of judges and family court commissioners ensuring that the parties understand the role and responsibilities of the GAL.

In addition, we request that the State Bar coordinate the production of a videotape that parties would view during their initial parent education session. This video could inform parties of the steps in a contested custody or placement case, the role of the GAL, and what they can expect financially. In addition, the video could describe how the conflict inherent in a custody or placement dispute may affect the parties and their children.

We would also request that the State Bar more widely disseminate the Bar's pamphlet setting forth similar information so that it is available to parties when they file for divorce or attend the initial session of mediation or parent education.

### **MENTORING**

Another issue that judges in particular raised to the Special Committee is that GALs are often young, inexperienced attorneys. Although we believe that additional training would increase the competency of such attorneys, it seems that mentoring by a more experienced GAL would be very beneficial for new attorneys who are planning to accept GAL appointments. Perhaps local bar associations would be in a better position to actually arrange mentors for new attorneys, but we would appreciate any efforts by the State Bar to coordinate mentoring.

Thank you for your consideration of these requests.

Sincerely,

---

Representative Mark Gundrum, Cochair  
Special Committee on Guardians Ad Litem  
in Actions Affecting the Family

---

Senator Kim Plache, Cochair  
Special Committee on Guardians Ad Litem  
in Actions Affecting the Family

Attachment

cc: Marjorie Schuett, Chair, Family Law Section, State Bar of Wisconsin



## APPENDIX 1

### *Committee and Joint Legislative Council Votes*

At its January 12, 2001 meeting, the Special Committee voted to recommend WLC: 0019/3 to the Joint Legislative Council for introduction in the 2001-02 Session of the Legislature. At that meeting, the Special Committee also voted to recommend that the Joint Legislative Council petition the Wisconsin Supreme Court to amend current Supreme Court Rules relating to eligibility for GAL appointments. The votes on the draft and the draft petition were as follows:

- WLC: 0019/3, relating to guardians ad litem, parent education and parenting plans in actions affecting the family: Ayes, 13 (Sens. Plache and Huelsman; Reps. Gundrum, and Owens; and Public Members Barrett, Cranley, Fahrenkrug, Hansen, Kirk, Onheiber, Pfeiffer, Ptacek and Screnock); Noes, 0; and Absent, 6 (Sens. Shibilski and Welch; Rep. Staskunas; and Public Members Delaney, Gemignani and Serlin).
- Petition to the Wisconsin Supreme Court to amend rules relating to eligibility for appointment as a GAL for a minor: Ayes, 14 (Sens. Plache and Huelsman; Reps. Gundrum, and Owens; and Public Members Barrett, Cranley, Fahrenkrug, Hansen, Kirk, Onheiber, Pfeiffer, Ptacek, Screnock and Serlin); Noes, 0; and Absent, 5 (Sens. Shibilski and Welch; Rep. Staskunas; and Public Members Delaney and Gemignani).

At its March 14, 2001 meeting, the Joint Legislative Council voted to introduce WLC: 0019/3 on a roll call vote as follows: Ayes, 18 (Sens. Risser, Baumgart, Burke, Darling, George, Grobschmidt, Robson, Rosenzweig and Zien; and Reps. Rhoades, Bock, Foti, Freese, Gard, Huber, Jensen, Lehman and Stone); Noes, 0; and Absent, 4 (Sens. Chvala and Panzer; and Reps. Black and Krug).

The Joint Legislative Council also voted to approve and send the petition to the Wisconsin Supreme Court on a roll call vote as follows: Ayes, 18 (Sens. Risser, Baumgart, Burke, Darling, George, Grobschmidt, Robson, Rosenzweig and Zien; and Reps. Rhoades, Bock, Foti, Freese, Gard, Huber, Jensen, Lehman and Stone); Noes, 0; and Absent, 4 (Sen. Chvala and Panzer; and Reps. Black and Krug).

WLC: 0019/3 was subsequently introduced as 2001 Senate Bill 126 on April 4, 2001 and was referred to the Senate Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform.

The petition was filed with the Clerk of the Wisconsin Supreme Court on April 5, 2001.



## APPENDIX 2

### JOINT LEGISLATIVE COUNCIL s. 13.81, Stats.

Cochair  
FRED A. RISSER  
*Senate President*  
5008 Risser Road  
Madison, WI 53705-1365

JAMES BAUMGART  
1419 North 16th Street  
Sheboygan, WI 53081-3257

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*Cochair, Joint Comt. on Finance*  
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*Senate Majority Leader*  
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*Ranking Minority Member, Joint  
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Milwaukee, WI 53208-3648

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*Assembly Majority Leader*  
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STEPHEN J. FREESE  
*Speaker Pro Tempore*  
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Dodgeville, WI 53533-1200

SENATORS  
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*President Pro Tempore*  
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Milwaukee, WI 53233-2326

RICHARD GROBSCHMIDT  
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South Milwaukee, WI 53172-1736

MARY PANZER  
*Senate Minority Leader*  
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West Bend, WI 53095-3653

REPRESENTATIVES  
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Comt. on Finance*  
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SCOTT R. JENSEN  
*Assembly Speaker*  
850 South Springdale Road  
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Cochair  
KITTY RHOADES  
*Representative*  
708 4<sup>th</sup> Street  
Hudson, WI 54016-1643

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PEGGY ROSENZWEIG  
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MICHAEL LEHMAN  
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Hartford, WI 53027-2614

JEFF STONE  
7424 West Forest Home Ave.  
Greenfield, WI 53220-3358

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the cochairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.





**GUARDIANS AD LITEM IN ACTIONS AFFECTING THE FAMILY,  
SPECIAL COMMITTEE ON**

Cochair  
KIM PLACHE  
Senator  
2614 17th Street  
Racine, WI 53405-3522

JOANNE HUELSMAN  
235 West Broadway, Ste. 210  
Waukesha, WI 53186-4832

CAROL OWENS  
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Oshkosh, WI 54904-9065

JOHN BARRETT  
Clerk of Circuit Court  
Milwaukee County  
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Milwaukee, WI 53233-1425

MARTHA CRANLEY  
KidsCount Coordinator  
WI Council on Children &  
Families, Inc.  
16 N. Carroll St., Suite 600  
Madison, WI 53703-2756

PATRICIA DELANEY  
Parent  
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LIL FAHRENKRUG  
M.S.W., Winnebago Co. Family  
Court Counseling  
Winnebago Co. Courthouse  
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& Foley  
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PHILIP KIRK  
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Judge, Waupaca County  
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Waupaca, WI 54981-2087

MICHAEL ONHEIBER <sup>(1)</sup>  
Family Court Commissioner  
Jefferson Co. Courthouse  
320 S. Main St., Room 218  
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Redgranite, WI 54970-0523

TONY STASKUNAS  
2010 South 103<sup>rd</sup> Court  
West Allis, WI 53227-1259

THOMAS G. PFEIFFER  
Member, WI Fathers for Children  
and Families  
4214 Beverly Road  
Madison, WI 53711-3713

GERALD P. PTACEK  
Judge  
Racine County Courthouse  
730 Wisconsin Avenue  
Racine, WI 53403-1274

JOSEPH J. SCRENOCK  
Attorney, Screnock & Screnock, Ltd.  
144 4<sup>th</sup> Avenue, Suite 1  
Baraboo, WI 53913

ERICA SERLIN  
Child Psychologist, Family Therapy  
Center of Madison, Inc.  
700 Rayovac Drive  
Madison, WI 53711-2479

STUDY ASSIGNMENT: The Committee is directed to study the guardian ad litem system as it applies to actions affecting the family, including an examination of the appointment, role, supervision, training and compensation of guardians ad litem. The review of the appointment of guardians ad litem shall include the necessity of appointment in contested custody or placement cases and whether professionals with specialized expertise in the emotional and developmental phases and needs of children should be appointed to act as guardians ad litem. The Committee shall prepare a report of any recommended legislation and shall petition the Wisconsin Supreme Court to consider rules for the reform of the guardian ad litem system in actions affecting the family based on the Committee's recommendations that are more appropriate for supreme court rules. The Special Committee shall report its recommendations to the Joint Legislative Council by January 1, 2001.

Established by a May 18, 2000 mail ballot; Cochairs appointed by a June 13, 2000 mail ballot; and members appointed by an August 14, 2000 mail ballot.

19 MEMBERS: 4 Senators; 3 Representatives and 12 Public Members.

LEGISLATIVE COUNCIL STAFF: Anne Sappenfield, Senior Staff Attorney; Pam Shannon, Senior Staff Attorney; and Julie Learned, Support Staff.

<sup>(1)</sup> Appointed as a Public Member of the Special Committee by an October 12, 2000 mail ballot.



**Committee Materials List**

**September 13, 2000 Meeting**

**[Staff Brief 00-2](#), Guardians Ad Litem in Actions Affecting the Family (9-6-00)**

**October 24, 2000 Meeting**

**[Memo No. 1](#), Issues Raised for Consideration by the Special Committee on Guardians Ad Litem in Actions Affecting the Family (10-13-00)**

**[Material](#)** submitted by Jan Raz, President, Wisconsin Fathers for Children and Family (10-6-00)

**[Letter](#)** from Robert and Rosemary Albrecht (10-10-00)

**November 14, 2000 Meeting**

**[Memo No. 2](#), Issues Raised for Consideration by the Special Committee on Guardians Ad Litem in Actions Affecting the Family (11-7-00)**

**December 12, 2000 Meeting**

**[Memo No. 3](#), Issues Raised for Consideration by the Special Committee on Guardians Ad Litem in Actions Affecting the Family (12-5-00)**

**[Memo No. 4](#), Three Draft Letters (12-5-00)**

**[WLCS: 0019/1](#)**, relating to compensation of guardians ad litem, parent education and parenting plans in actions affecting the family

**[Draft petition](#)** to the Wisconsin Supreme Court

**[Letter](#)** from Joseph Vaughn (11-17-00)

**January 12, 2001 Meeting**

**[Memo No. 5](#), Revised Draft Letters (1-5-01)**

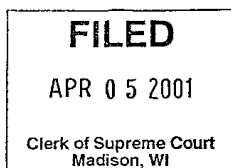
**[WLCS: 0019/2](#)**, relating to guardians ad litem, parent education and parenting plans in actions affecting the family

**[WLCS: 0057/1](#)**, relating to mediation and parenting plans in actions affecting the family

**[Draft letter](#)** to Representative Carol Owens and Senator Gary George, relating to child support legislation

**[Memorandum](#)** from Representative Tony Staskunas, WLCS: 0019/1 (1-4-01)





### Petition to the Wisconsin Supreme Court

The Joint Legislative Council, on the unanimous recommendation of the Special Committee on Guardians Ad Litem in Actions Affecting the Family, hereby petitions the court to amend SCR 35.01 and create SCR 35.015 and SCR 35.03 (1m) relating to eligibility for appointment as guardian ad litem for a minor.

First, the amendments create new eligibility requirements for attorneys who accept appointments as a guardian ad litem in proceedings under ch. 767, Stats. As amended, the rules would require an attorney to have received six hours of approved guardian ad litem education during the combined continuing legal education reporting period and the immediately preceding reporting period. Three of the required six hours would be in family court guardian ad litem education, as described below. In addition, as under current rules, a court could also determine that an attorney is qualified for a guardian ad litem appointment. The provision under which an attorney may accept appointments if he or she had attended 30 hours of guardian ad litem education would, therefore, apply only to attorneys accepting guardian ad litem appointments in proceedings under ch. 48 or 938, Stats. This change is requested because the Special Committee concluded that attorneys practicing as guardians ad litem should receive ongoing relevant education in order to effectively represent the best interests of children in family law disputes.

The second amendment would specify the elements of guardian ad litem education that an attorney acting as a guardian ad litem in family court must receive. The rationale for this change is that, due to the level of conflict in family law cases for which a guardian ad litem is appointed, the committee concluded that a guardian ad litem with knowledge about child development and family dynamics could better formulate a recommendation to serve a child's best interests.

The committee requests that SCR 35.01 (intro.) be amended to read:

Commencing on July 1, 1999, a lawyer may not accept an appointment by a court as a guardian ad litem for a minor in an action or proceeding under chapter 48, ~~767~~ or 938 of the statutes unless one of the following conditions has been met:

The committee requests that SCR 35.015 be created to read:

Commencing on July 1, 2002, a lawyer may not accept an appointment by a court as a guardian ad litem for a minor in an action or proceeding under chapter 767 of the statutes unless one of the following conditions has been met:

(1) The lawyer has attended 6 hours of guardian ad litem education approved under SCR 35.03 during the combined current reporting period specified in SCR 31.01 (7) at the time he or she accepts an appointment and the immediately preceding reporting period. At

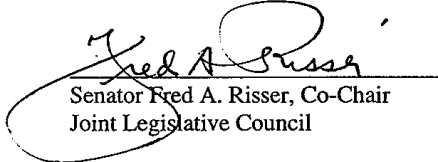
least 3 of the 6 hours shall be family court guardian ad litem education approved under SCR 35.03 (1m).

(2) The appointing court has made a finding in writing or on the record that the action or proceeding presents exceptional or unusual circumstances for which the lawyer is otherwise qualified by experience or expertise to represent the best interests of the minor.

The committee requests that SCR 35.03 (1m) be created to read:

(1m) The board of bar examiners shall approve courses of instruction or continuing legal education activities as family court guardian ad litem education that are on the subject of proceedings under chapter 767 of the statutes; child development and the effects of conflict and divorce on children; mental health issues in divorcing families; the dynamics and impact of family violence; and sensitivity to various religious backgrounds, racial and ethnic heritages and issues of cultural and socio-economic diversity. The board of bar examiners may only approve courses of instruction or continuing legal education activities that are conducted after July 1, 2001.

Respectfully submitted this day of April 5, 2001

  
Senator Fred A. Risser, Co-Chair  
Joint Legislative Council

  
Representative Kitty Rhoades, Co-Chair  
Joint Legislative Council